

REMARKS

This Application has been carefully reviewed in light of the Non-Final Office Action mailed February 23, 2009. At the time of the Office Action, Claims 15-18 and 21-31 were pending and were rejected in this Application. Claims 15, 21, and 29 have been amended to further define various features of Applicants' invention. Applicants respectfully request reconsideration and favorable action in this case.

Specification Objections

The Examiner objected to the specification as failing to provide proper antecedent basis for the claimed subject matter. The term "enclosed recess" is not found in the specification. Applicants hereby amend claims 15, 21, and 29 to remove the term "enclosed" from the specification.

Rejections under 35 U.S.C. §103

Claims 21-31 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,674,224 issued to Howell et al. ("Howell") in view of U.S. Patent No. 6,499,486 issued to Chervitz et al. ("Chervitz").

Claims 15-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Chervitz in view of U.S. Patent No. 6,306,138 issued to Clark et al. ("Clark"). Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

When determining whether a claim is obvious, the Examiner must make "a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art." *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). Further, it is well settled that obviousness requires at least a suggestion of all the features in a claim. *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). Moreover, as the Supreme Court recently stated, "*there must be some articulated reasoning* with some rational underpinning to support the legal conclusion of

obviousness.” *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (emphasis added)).

Claim 15

With regard to claim 15, Applicants respond that Chervitz in view of Clark do not at least suggest, in part, advancing the head section of a transverse suspension device completely beneath the graft loop, compressing the graft loop forward (toward the opposite wall of the femoral tunnel) and outward (away from the intersection of the femoral and transverse tunnels) between an abutment surface and the opposite wall of the femoral tunnel, wherein the abutment surface comprises an annular flange having a wider diameter than the head section. Specifically, Chervitz does not at least suggest advancing the head section of a transverse suspension device completely beneath the graft loop, but rather only describes passing a portion of a head section (*i.e.*, crosspin 60) beneath a graft loop (see Figs. 4 and 14) as an enlarged section of crosspin 60 prevents the head section of the device from advancing completely beneath the graft loop. In contrast, the present claims recite that head section 6 advances completely beneath the graft loop.

Further, Clark does not at least suggest compressing the graft loop between an annular flange and the opposite wall of the femoral tunnel, wherein the graft loop is compressed both forward and outward. The device described by Clark does not disclose any surface that suggests an annular flange but rather describes a frustoconical surface or surface that tapers away from being able to outwardly compress the graft, and therefore cannot describe compressing the graft loop outward (or radially from the annular surface) between an annular flange surface having a wider diameter than the head section and the opposite wall of the femoral tunnel. Because the cited references, alone or in combination, do not at least suggest all of the elements of claim 15 as amended, Chervitz in view of Clark cannot render obvious amended claim 15. For at least these reasons, Applicants submit that claim 15 as amended is in condition for allowance, and respectfully request withdrawal of the rejection.

Claims 16-18 and 22 depend directly or indirectly from claim 15. Applicants hereby repeat and incorporate the above comments made with regard to amended claim 15. For at least these reasons, Applicants submit that claims 16-18 and 22 are in condition for allowance, and respectfully request withdrawal of the rejection.

Claims 21 and 29

With regard to claims 21 and 29, Applicants respond that Howell in view of Chervitz do not at least suggest, in part, advancing the head section of a transverse suspension device completely beneath the graft loop, compressing the graft loop forward (toward the opposite wall of the femoral tunnel) and outward (away from the intersection of the femoral and transverse tunnels) between an abutment surface and the opposite wall of the femoral tunnel, wherein the abutment surface comprises an annular flange having a wider diameter than the head section. Specifically, contrary to the statements in the Office Action, Howell does not describe urging the graft against the opposite wall to embed it, nor does it described compressing the graft loop between and abutment surface and the opposite wall of the femoral tunnel. Initially, Applicant would like to emphasize that Howell describes placing screw 42 into position and then looping a graft over nose 48 of screw 42. At this point, Applicant asserts that there can be no compression of the graft between screw 42 and the graft.

In reference to Fig. 14, Howell then describes the use of a reverse threaded screw 44 which is inserted into screw 42 for advancing bone mulch through screw 42 and into the femoral tunnel in the proximity of the graft. Contrary to the statement in the Office Action, advance of reverse threaded screw 44 does not move screw 42 into compressing the graft between the screw and the femoral tunnel wall. Rather, the disclosure of Howell teaches away from advancing screw 42 into a compression fit. See Howell at col. 8, ll. 58-61 (stating “[i]t is important to discontinue turning of the inner screw 44 once it is seated otherwise the turning of the screw 44 will result in the outer screw 42 being withdrawn from the femur 12”). Because Howell does not at least suggest compressing the graft loop between an abutment surface (comprising an annular flange) and the opposite wall of the femoral tunnel, but rather teaches away from further advancing the transverse suspension device into compression with the graft, Howell in view of Chervitz cannot render obvious claims 21 and 29 as amended. For at least these reasons, Applicants submits that amended claims 21 and 29 are in condition for allowance, and respectfully requests withdrawal of the rejection.

Claims 23-28 and 30-31 depend directly or indirectly from claim 21. Applicants hereby repeat and incorporate the above comments with regard to amended claim 21. For at least these

reasons, Applicants submit that claims 23-28 and 30-31 are in condition for allowance, and respectfully request withdrawal of the rejection.

Information Disclosure Statement

Applicants enclose an Information Disclosure Statement and PTO Form 1449, with copies of the references for the Examiner's review and consideration.

CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

The Commissioner is hereby authorized to charge \$180 for the IDS and any additional fees necessary or credit any overpayments to Deposit Account No. 50-0359 of ArthroCare Corporation in order to effectuate this filing.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.358.5925.

Respectfully submitted
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Date: 6/23/09

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Enclosure: 1) Information Disclosure Statement and PTO Form 1449, with copies of the references.